COMMUNITY AND ECONOMIC DEVELOPMENT CLINIC
YALE LAW SCHOOL

TO: Honorable Chairman Lopes, Co-Chair
Honorable Chairman Williams, Co-Chair
Members of the Housing Committee

FROM: Melissa Gayton, Community and Economic Development Clinic

DATE: March 9, 2022

RE: Support for S.B. 219

Dear Chairman Lopes, Chairman Williams, and members of the Housing Committee:

My name is Melissa Gayton, and I am a member of Yale Law School's Community and Economic Development Clinic writing in support of S.B. 291 concerning certain protections for group and family childcare homes.

Connecticut's child care is outrageously expensive and in short supply. In 2018, over 40 percent of Connecticut residents lived in a child care desert.[1] Since then, child care availability in Connecticut has dramatically decreased. The state is at only 72 percent of its pre-pandemic capacity.[2] For many Connecticut residents, the limited child care options available are entirely out of reach. Connecticut's child care costs are the fifth highest in the nation, and a typical family would have to spend a third of its income on child care for an infant and a 4-year-old.[3] The tremendous shortage of child care is an ongoing crisis for working parents.

Home based child care would make a massive contribution towards addressing this shortage. The Community Economic Development Clinic has heard stories from many providers who desire to care for more children but are prevented from doing so by zoning boards and landlords, despite state regulators finding them more than capable of providing high quality child care. Among the few providers that the Clinic has spoken with in Stamford alone, expanding protections against zoning restrictions to group child care would result in an increase of capacity of at least 30 slots – that's 30 children receiving safe and high quality care and 30 families who would be able to work and provide for their families without worrying for the care and safety of their children.

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[1] Rasheed Malik and others, "America's Child Care Deserts in 2018" (Washington: Center for Ameri- can Progress, 2018), available at https://www. americanprogress.org/issues/early-childhood/ reports/2018/12/06/461643/americas-child-care- deserts-2018/.
[2] Christine Stuart, "Connecticut's Child Care Crisis Continues," *NBC Connecticut*, (May 17, 2021) https://www.nbcconnecticut.com/news/local/connecticuts-child-care-crisis-continues/2489598/
[3] Economic Policy Institute, "Child Care Costs in the United States," https://www.epi.org/child-care-costs-in-the-united-states/#/CT

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Despite clear benefits of home based child care in addressing this crisis, child care homes face obstacles including local zoning barriers that make it difficult for childcare homes to operate in residential districts and prohibitive lease provisions that may lead to eviction by landlords and publichousing authorities. Current Connecticut law permits discrimination against child care homes by municipalities and landlords. These laws impose a barrier to Connecticut's goal of a regulated, safe, and accessible childcare market by making it costly and difficult to open or maintain child care homes in many parts of Connecticut, thereby limiting access to much-needed child care and harming the interests of children and working parents.

Connecticut should enact new legislation that provides stronger safeguards for family and group child care homes, further protecting them from zoning restrictions and barriers posed by landlords. Connecticut can emulate stronger statutory protections for family and group child care enacted by other states, including New York and California. Connecticut state law prohibits local governments from imposing zoning restrictions on family child care homes and requires that they be treated like other residential uses. Connecticut should seek to increase access to child care by prohibiting local governments from banning both family child care and group child care homes in residential areas.

Better policies do exist—other states have allowed for the appropriate provision of home-based child care through policies similar to those in S.B. 291. These policies are not radical or risky – they are common-sense amendments that would not only provide adequate protection for our state's child care providers, but also ensure quality childcare for Connecticut children and great opportunities for families, especially mothers, who could get back to work with great child care availability.

1. California and New York protect group childcare from zoning restrictions

Currently, Connecticut law protects family childcare homes of up to six children from zoning restrictions imposed by localities. It does not, however, extend those protections to group childcare

[1] See Section 1.1 below.
[2] See Section 1.2 below.
[3] Revised Code of Washington (R.C.W.) 36.70A.450 (1).
[4] O.R.S. § 329A.440 provides that "(1) A registered or certified family child care home [of up to 16 children] shall be considered a residential use of property for zoning purposes. The registered or certified family child care home shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings. A city or county may not enact or enforce zoning ordinances prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a registered or certified family child care home…(2) A city or county may impose zoning conditions on the establishment and maintenance of a registered or certified family child care home in an area zoned for residential or commercial use if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone."
[5] M.S.A. § 245A.14.

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homes of up to twelve children. In Connecticut, these limitations frustrate provider efforts to meet demand in their communities by expanding to a group child care home—even if the state fully supports their effort. This lack of protections for group childcare homes creates uncertainty as a provider seeks to expand their business, often resulting in legal fees. Despite investment of time, money, and energy, expansion is sometimes denied, even when the Office of Early Childhood has already determined the home is large enough to accommodate more children.

Responding to similar challenges, states across the country have enacted statutory protections for larger group childcare homes by limiting the ability of localities to impose zoning restrictions. These states serve as instructive examples for how stronger state protections meaningfully reduce obstacles for the provision of home-based childcare.

1.1. New York law preempts local zoning restrictions for home-based childcare

In contrast to Connecticut, New York law extends equal protections to group child care homes. Under New York law, registered home-based childcare businesses of up to ten children are protected from local zoning restrictions.[6] New York Social Services Law Section 390 provides that "[n]o village, town…, city or county shall prohibit or restrict use of a one or two family dwelling, or multiple dwelling for [a licensed] family or group family day care."[7]

New York courts have repeatedly struck down local zoning laws that restrict the operation of family childcare homes in residential districts, finding that these laws are preempted by state statute [8] These court decisions make clear that localities cannot impose special parking requirements, minimum lot size or minimum floor space requirements on home-based childcare beyond those imposed on residences more generally.[9]

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[6] NY Department of State, General Counsel Legal Memorandum LU-16 ("The Regulation of Daycare Facilities") (2002).

[7] N.Y. Soc. Serv. Law § 390 (12)(a). See also Chapter 875 of the Laws of 1986; NY Department of State, General Counsel Legal Memorandum LU-16 ("The Regulation of Daycare Facilities") (2002), https://dos.ny.gov/legal-memorandum-lu-16-regulation-day-care-facilities.

[8] *People v. Town of Clarkstown*, 160 A.D.2d 17, 559 N.Y.S.2d 736 (1990) (finding that local zoning law restricting family day care homes was impliedly preempted by state law, although there was not yet an express preemption provision for family day care homes at the time); *People v. Thorner*, 29 Misc. 3d 51, 909 N.Y.S.2d 864 (App. Term 2010) (finding that local restrictions on group family day care provider in multifamily building was preempted by state law despite fact that provider did not reside in the building); *Town of Throop v. Cordway*, 109 A.D.3d 1214, 971 N.Y.S.2d 917 (2013) (finding that locality could not require family day care provider to obtain a town zoning permit or pay an application fee).

[9] *People v. Town of Clarkstown*, 160 A.D.2d 17, 559 N.Y.S.2d 736 (1990); NY Department of State, General Counsel Legal Memorandum LU-16 ("The Regulation of Daycare Facilities") (2002).

1.1. California law preempts local zoning restrictions for home-based childcare

California's statewide protections for child care homes include family daycare homes of up to fourteen children. California recently strengthened its protections for child care homes in the Keeping Kids Close to Home Act of 2019. Municipalities must treat home-based child care as a residential use of property without adding on additional local permitting, fees, or other red tape. The Keeping Kids Close to Home Act includes protections for both single-family homes and multi-family dwellings or apartments.

California's reforms recognize that affordable childcare is truly a statewide issue. When towns prevent access to it, the entire state suffers the consequences. California Health and Safety Code Section 1597.30 explicitly encourages home-based childcare as a matter of state policy, stating that "the state has a responsibility to promote the development and expansion of regulated family daycare homes to care for children in residential settings."

2. California and New York have lifted restrictions on home-based childcare in rentals

When it comes to rentals, current Connecticut law is mostly silent on protections for family and group childcare businesses. Landlords enjoy largely unfettered power to extort providers, refuse to allow childcare businesses on their property, or even evict them. Providers may invest substantial time, money, and energy in preparing their business and receiving approval from the state only to find that they cannot proceed in the face of landlord disapproval.

Connecticut's current position is particularly egregious with regard to the state's public housing program. Some public housing authorities expressly prohibit the operation of in-home business from subsidized units, overlooking the important role these businesses play for their community. Affordable on-site childcare enables other public housing residents to leave their child in safe hands while they seek employment or educational opportunities. In addition, childcare providers have increased income and are able to pay higher rents in subsidized housing, where rents are often calculated as a percentage of a tenant's income.

States such as New York and California have demonstrated the power of public policies which ban landlord-imposed restrictions, leaving the decision of how many children a rental can reasonably support in the hands of the state agency authorized to grant family and group child care licenses. These legislative solutions offer relief from unjust restrictions to parents, providers, and the children in their care.

[10] *Quinones v Board of Mgrs. Of Regalwalk Condominium I.*, 242 AD2d 52, 55-56

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2.1. New York courts prohibit landlords from banning home-based childcare

New York courts have repeatedly found that landlords and condominium associations may not prohibit home-based childcare. As in Connecticut, New York childcare providers faced discrimination from landlords and residential associations. Eventually, these providers brought suit to enforce their right to operate a duly licensed business. In a 1998 case, a New York court held that condominium associations could not prohibit family and group childcare through the use of restrictive covenants.[10] The court grounded its opinion in New York Social Services Law Section 390, explaining that "the clear intent of the statute is to expand the availability and accessibility of such day care facilities." New York courts later expanded these protections to residential leases. Licensed home-based child care providers in New York have enjoyed protections from not only zoning but also restrictions imposed by landlords and condominium associations since 1998. They remain, of course, subject to state licensure laws that ensure the health and safety of children cared for by these programs.

2.2 California voids all restrictive provisions relating to real property

Despite strong protections for home-based childcare passed in 1996, California landlords continued to impose significant restrictions upon providers. That is why, in September 2019, California voided all restrictive provisions for home-based child cares of up to fourteen children, "imposed orally, in writing, or by conduct" related to real property. The state also voided any written instrument or act that restricts childcare providers from obtaining a lease or mortgage. These provisions apply to all rental units, condominium associations, and homeowner associations.

Because landlords and residential associations can no longer prohibit tenants and residents from using their home for a childcare business, providers no longer have to fear eviction or other reprisal. This makes providers more likely to seek a full license from the state instead of operating under the table to avoid confrontation with their landlord or residential association.

3. Other State Models: Washington, Oregon, Minnesota, and Illinois

In addition to New York and California, several other states also protect home-based family child cares from local zoning restrictions. Washington State extends protections similar to, but stronger than, those in Connecticut, by protecting in-home providers serving larger groups of children. Washington's protections provide that "no county or city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care" facility of up to twelve children.[4] Washington's statutory protections go on to specify that localities may impose "zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not

[4] Revised Code of Washington (R.C.W.) 36.70A.450 (1).

precluded."[5] Oregon has similar statutory protections, which extend to family child care homes of up to sixteen children.[6]

Minnesota state law also protects in-home providers serving larger groups of children. Minnesota regulations provide that "a group family day care facility licensed under Minnesota Rules…to serve 14 or fewer children shall be considered a permitted single-family residential use of property for the purposes of zoning and other land use regulations."[7]

Illinois does not have explicit statutory protections that prevent municipalities from banning family and group child care. However, Illinois courts have repeatedly struck down local zoning ordinances that have the effect of excluding state-licensed family and group child care or limiting them in ways that go beyond state regulations.[8]

Conclusion

Current Connecticut law permits zoning authorities and landlords to erect barriers to the provision of home-based child care, even where the state's licensing agency has determined that a provider and her home would well-serve Connecticut children and families. Despite Connecticut's goal of a regulated, safe, and accessible childcare market, childcare homes currently face undue obstacles. These obstacles include local zoning barriers that make it difficult for group childcares to operate in residential districts and prohibitive lease provisions that permit landlords to evict licensed childcare providers for reasons unrelated to the health and safety of children or the provider's ability to meet the obligations of her lease.

These obstacles make it costly and sometimes impossible to open or maintain childcare homes in many parts of Connecticut, limiting access to much-needed childcare and harming the interests of children and working parents.

An initial push between 1987 and 1990 recognized the importance of home-based childcare and resulted in zoning protections for family child care providers. Since then, Connecticut law has created an untenable situation for many families, limited the ability of providers to start their own businesses, and inhibited children's access to the quality early learning settings that lay the

[5] R.C.W. 36.70A.450 (4).
[6] O.R.S. § 329A.440 provides that "(1) A registered or certified family child care home [of up to 16 children] shall be considered a residential use of property for zoning purposes. The registered or certified family child care home shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings. A city or county may not enact or enforce zoning ordinances prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a registered or certified family child care home…(2) A city or county may impose zoning conditions on the establishment and maintenance of a registered or certified family child care home in an area zoned for residential or commercial use if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone."
[7] M.S.A. § 245A.14.
[8] *Hawthorne v. Vill. of Olympia Fields*, 204 Ill. 2d 243, 790 N.E.2d 832 (2003) (locality "partially" preempted from regulating day care homes in any manner that conflicts with Illinois Child Care Act or state regulations); *Rheams v. Village of Flossmoor*, No. 95 CH 3485 (Cir. Ct. Cook County, Oct. 17, 1995) (municipality preempted by Illinois Child Care Act and state regulations from regulating family day care homes "in any manner whatsoever.").

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foundation for success in school and beyond. Today, I encourage you to pass legislation that provides stronger statutory safeguards for family and group childcare homes, in the interest of both childcare providers and the families they serve.

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